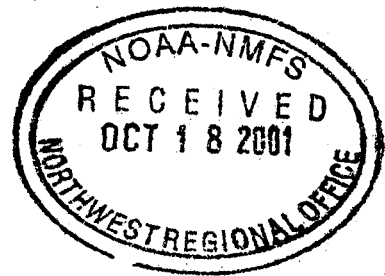


October 16, 2001

D. Robert Lohn
Northwest Region, NMFS
7600 Sand Point Way N.E.
Seattle, Washington 98115



Dear Mr. Lohn:

RE: PETITION TO DELIST

Pursuant to 5 U.S.C. § 553(e); 16 U.S.C. § 1533; and 50 C.F.R. § 424.11, a coalition of agricultural organizations in the state of Washington (see list of organizations attached at the bottom of the petition) hereby petitions the National Marine Fisheries Service ("NMFS") to remove several Evolutionarily Significant Units ("ESU") of salmon listed as threatened or endangered under 16 U.S.C. § 1533(c).

NMFS is obligated by the Endangered Species Act ("ESA") to list species pursuant to the legal requirements of the Act and "solely on the basis of the best scientific and commercial data available." 16 U.S.C. § 1533(b)(1)(A). Likewise, NMFS is obligated to periodically review such listings and remove any such species upon the determination that these legal and factual criteria are no longer met. 16 U.S.C. §§ 1533 (a)(1), (b)(1)(A), (b)(1)(B)(3), (c)(1), (g)(1); 50 C.F.R. § 424.11. Specifically, NMFS regulations state that the "factors considered in delisting a species are those in paragraph (c) of this section, as they relate to the definitions of endangered or threatened species. Such removal must be supported by the best scientific and commercial data available." 50 C.F.R. § 424.11(d)(emphasis added). A species may cease to be threatened or endangered if "[s]ubsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error." Id. at (d)(3)(emphasis added).

Pursuant to 5 U.S.C. § 553(e) and 16 U.S.C. § 1533(b)(3)(A), interested parties have the right to petition the NMFS to consider such delisting. NMFS must then, to the maximum extent practicable, within 90 days of receipt of said petition make a finding as to whether the petition merits review. 16 U.S.C. § 1533(b)(3)(A). If so, the NMFS must review the petition and make a decision thereon within 12 months of receipt of the original petition. Id. at (B).

The basis for this petition is the United States District Court opinion Alsea Valley Alliance v. Evans, No. 99-6265-HO, 2001 WL 1105100 (D. Or. Sept. 10, 2001). As NMFS is aware, the court invalidated NMFS's listing of the Oregon Coast Coho Salmon ESU on the basis that NMFS cannot segregate hatchery reared fish from wild born fish when listing a species. Specifically, the court held that while an ESU may be considered a "distinct population segment" ("DPS") pursuant to 16 U.S.C. § 1532(6), any further division of a species is not permitted by the ESA. Id. at *6. By segregating wild born fish from genetically identical hatchery born fish, the NMFS illegally distinguished between two groups of animals within a given DPS. Id. "The distinction between members of the same ESU/DPS is arbitrary and capricious because NMFS may consider listing only an *entire* species, subspecies or distinct population segment ("DPS") of any species." Id. In so holding, the court rejected the NMFS's long-standing policy that "*such [hatchery reared] fish will not be included as part of the listed species.*" Id. at *3.

It is clear from the court's ruling that NMFS's policy of segregating hatchery reared fish from wild born fish when listing salmon ESU is illegal, arbitrary, capricious, and not in accord with the best available scientific or commercial data. In particular, by removing hatchery reared fish from the total population of a particular ESU, the size of the population is drastically reduced, thereby magnifying the alleged factors which initially contributed to the listing. Upon considering the entire population of animals within a given ESU, both hatchery and wild, the justification for listing may be greatly reduced or eliminated altogether. The NMFS *must* consider *all* fish—both hatchery and wild--within a given DPS when deciding listing status.

Since 1993, it has been NMFS's policy to segregate hatchery reared salmon within a given ESU. 58 Fed. Reg. 17,573 (1993). This policy is illegal.

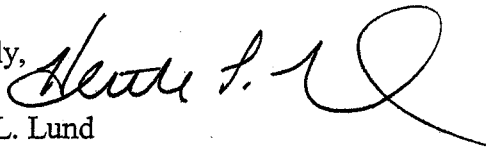
For the foregoing reasons, Washington State Farm Bureau hereby petitions the NMFS to delist the following ESU of salmon:

1. Puget Sound Chinook Salmon, 64 Fed. Reg. 14,308 (March 24, 1999);
2. Hood Canal Summer-Run Chum Salmon, 64 Fed. Reg. 14,508 (March 25, 1999);
3. Columbia River Chum Salmon, 64 Fed. Reg. 14,508 (March 25, 1999);
4. Snake River Steelhead, 62 Fed. Reg. 43937 (August 18, 1997);
5. Middle Columbia River Steelhead, 62 Fed. Reg. 14571 (March 25, 1999);
6. Upper Columbia River Steelhead, 62 Fed. Reg. 43,937 (August 18, 1997);
7. Snake River Spring/Summer Chinook Salmon, 57 Fed. Reg. 14653 (April 22, 1992);
8. Snake River Fall Chinook Salmon, 57 Fed. Reg. 14633 (April 22, 1992);
9. Upper Columbia River Spring-Run Chinook Salmon, 64 Fed. Reg. 14,308 (March 24, 1999);
10. Lower Columbia River Chinook Salmon, 64 Fed. Reg. 14,308 (March 24, 1999);
11. Lower Columbia Steelhead, 63 Fed. Reg. 13,347 (March 19, 1998); and,
12. Snake River Sockeye Salmon, 56 Fed. Reg. 58,619 (November 20, 1991).

NMFS must make a finding as to whether this petition merits review within 90 days of receipt of said petition. 16 U.S.C. § 1533(b)(3)(A).

This letter also provides notice of intent to sue, pursuant to 16 U.S.C. § 1540(g)(2)(C), to compel the NMFS to take action to delist the aforementioned species, provided NMFS does not voluntarily act in a timely manner.

Sincerely,



Hertha L. Lund
Assistant Director for Government Relations
Washington State Farm Bureau

On behalf of the following agricultural organizations:

Western Washington Agricultural Association
Washington Potato & Onion Association
Washington State Farm Bureau

Washington State Dairy Federation
Washington State Grange
Washington Cattlemen's Association